

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Daniel F. Terrance,

Debtor.

Chapter 13

Case No.: 00-13083

APPEARANCES:

Paul M. Fisher, Esq.
Attorney for the Debtor
36 Park Street
Canton, New York 13617

Andrea E. Celli, Esq.
Chapter 13 Standing Trustee
350 Northern Boulevard
Albany, New York 12204

Diane Davis, Esq.
Of Counsel

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is the Chapter 13 Standing Trustee's ("Trustee") objection to Daniel Terrance's ("Debtor") claimed exemption. The Trustee has also objected to confirmation.

Facts

The facts, taken verbatim from the parties' stipulation, are:

1. On or about May 31, 2001, Debtor filed a petition for relief under Chapter 13 of the United States Bankruptcy Code.
2. With the petition, Debtor filed a plan that proposes to pay the Chapter 13 Trustee \$316.00 per month for a period of thirty-eight (38) months to pay allowed general unsecured creditors 15%, plus a \$10,000 lump sum annually on January 31 for the years 2001 through 2003, and to report back to the Trustee annually on his tithing contributions.

3. Claims timely filed and not as of yet objected to are unsecured in the sum of \$166,603.92.
4. By Order dated October 20, 2000, this Court avoided a preference judgment lien in favor of Debtor, deeming the claim of Ellis and Ellis Ford unsecured.
5. On or about February 22, 2001, Debtor filed amended Schedules B and C. In the amended Schedule C, Debtor has claimed as exempt an annuity under New York Insurance Law §3212.
6. The annuity contract was purchased as required under the terms of a structured settlement agreement between the defendant and the plaintiff in a pre-petition personal injury cause of action.
7. The Contract states that The Prudential Property and Casualty Insurance Company is the owner and is entitled to exercise all rights of ownership and control of the contract.
8. Under the terms of the Contract, Debtor receives monthly payments of \$3,341.21 for a term of 360 months starting May 1, 1995, and further that in the years 1996, 2000, and 2005, four annual payments of \$25,000.00 will be made starting August 1 in each of those years and that the 1996, 2000 and 2005, lump sum payments are to be applied exclusively to Debtor's children's college educations.
9. Prior to becoming disabled, Debtor worked at New York Power Authority as a lineman.
10. In addition to monthly payments under the Contract, Debtor receives \$1,163.01 per month in New York State Disability Retirement and \$1,227.00 per month in SS Disability (including children's benefit).
11. The structured personal injury settlement is "sealed" by agreement between the parties.
12. The Trustee has objected to the Debtor's claim that the proceeds of the contract entered is exempt under New York State Insurance Law §3212.
13. The Trustee has objected to the proposed Chapter 13 plan on the

basis that it does not satisfy the liquidation test pursuant to 11 U.S.C. §1325(a)(4).

14. Both the Trustee's Objection to Exemption and Objection to Confirmation involve the same issues and will be briefed together.

Arguments

The Trustee argues this annuity contract settles a personal injury claim, and therefore, the Debtor is limited to the \$7,500.00 personal injury exemption pursuant to New York Debtor and Creditor Law §282(3)(iii).

The Debtor disagrees. He contends New York Debtor and Creditor Law §282 and New York State Insurance law are clear and based upon them he has taken a proper exemption.

Discussion

Since, New York State has “opted out”¹ of exemptions provided by the Bankruptcy Code, this case of first impression is resolved within the statutory framework of New York State law. Pursuant to New York State Debtor and Creditor law § 282², annuity contracts, as defined in New York State Insurance Law § 3212, are exempt property. New York State Insurance Law § 3212 specifically defines “annuity contracts” as:

(2) An annuity contract includes any obligation to pay certain sums at stated times, during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether such sums are payable to one or more

¹See, New York State Debtor and Creditor Law §§ 282, 283 and 11 U.S.C. § 522.

²New York State Debtor and Creditor Law § 282 states, in relevant part:

Under section five hundred twenty-two of title eleven of the United States Code, entitled “Bankruptcy”, an individual debtor domiciled in this state may exempt from the property of the estate, to the extent permitted by subsection (b) thereof, only ... (ii) insurance policies and annuity contracts and the proceeds and avails thereof as provided in section three thousand two hundred twelve of the insurance law ...

persons, jointly or otherwise, but does not include payments under a life insurance policy at stated times during life or lives, or for a specified term or terms.

The present annuity contract falls squarely within this definition. Subdivision (d)(1) of this section specifically states,

The benefits, rights, privileges and options which, under any annuity contract are due or prospectively due the annuitant, who paid the consideration for the annuity contract, shall not be subject to execution.

Thus, based upon the wording of the statute, the Debtor's exemption appears to be appropriate.

Notwithstanding the statutory language, as previously noted, the Trustee argues this annuity contract is clearly traceable to a personal injury settlement and does not fall within the parameters of the Insurance Law. Thus, she argues, the \$7,500.00 personal injury exemption found in New York State Debtor and Creditor Law § 283 controls.

The Trustee, first, directs the court to the legislative history of § 3212 as support for the proposition that the section applies only to annuities that are related to life insurance or disability policies. (Trustee's Memorandum p. 5.) An analysis of the legislative history is unnecessary, however, because the language of the statute is clear and unambiguous and, as previously noted, the present annuity falls squarely within that specific definition.

The Trustee next points to case law arguing § 3212 should be construed as limited in scope; she relies primarily on *In re Rhinebolt*, 131 B.R. 973 (Bank. S.D. Oh. 1991) and *In re Young*, 806 F.2d 1303 (5th Cir. 1987). These cases are factually distinguishable. In *Rhinebolt*, Ohio law, which specifically limits the annuity exemption, thus differing from New York Law, was analyzed. *In re Rhinebolt*, 131 B.R. 973 at 975. In *Young*, the court determined that the payment plan was an account receivable and not an annuity, and that the Louisiana exemption

was inapplicable. *In re Young*, 806 F.2d 1303 at 1307. In the instant case, the annuity falls within the New York statutory framework and, as previously noted, the statute's plain meaning is clear.

Finally, New York Debtor and Creditor Law § 283 provides pertinent limitations on the annuity contract exemption. Subdivision (1) contains a \$5,000 limitation on an exemption for annuity contracts if, *inter alia*, it was purchased within six months of the filing. This limitation is not presently applicable because the annuity contract was purchased on May 11, 1995. The fact that it was obtained six years prior to the filing is important and alleviates the concern that its purchase was a veiled attempt to frustrate creditors.

Conclusion

For these reasons, the Trustee's objections are overruled. The exemption is appropriate, the case is confirmed, and the Trustee is directed to submit the appropriate orders in due course.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Court

